

# **EXHIBIT 5**

## **Filed Under Seal**

1                   UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SONOS, INC.,  
4                   Plaintiff,  
5                   vs.    Case No. 3:21-CV-07559-WHA  
6 GOOGLE LLC  
7                   Defendant.

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8                   -AND-

9                   GOOGLE LLC,  
10                   Plaintiff,  
11                   vs.    Case No. 3:20-CV-06754-WHA  
12 SONOS, INC.,  
13                   Defendant.

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14                   \*\*CONFIDENTIAL - ATTORNEYS' EYES ONLY\*\*

15                   ZOOM DEPOSITION OF JAMES E. MALACKOWSKI  
16 (Reported Remotely via Video & Web Videoconference)

17                   Miami, Florida (Deponent's location)

18                   Monday, January 30, 2022

19                   Volume 1

20 STENOGRAPHICALLY REPORTED BY:

21 REBECCA L. ROMANO, RPR, CSR, CCR

California CSR No. 12546

22 Nevada CCR No. 827

Oregon CSR No. 20-0466

23 Washington CCR No. 3491

24 JOB NO. 5686085

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1 the benchmark that I used, so I didn't think there 04:18:50  
2 would be any need for a change there.

3 And we moved forward to talk about the  
4 '966 royalty base issues that you and I have  
5 already spoken about. 04:19:05

6 Q. So since your deposition in connection  
7 with the share down trial, have you become aware of  
8 any users of the IFTTT app other than members of  
9 your Ocean Tomo team, outside counsel for Sonos, or  
10 Sonos' retained technical experts who have used 04:19:23  
11 that app for grouping of speakers?

12 A. No, but I, A, didn't seek such because  
13 it's not relevant, and, B, I don't know how that  
14 information would ever be available. We know that  
15 there is a very large number of users for IFTTT, 04:19:40  
16 but I don't have that data to show how they've  
17 configured their use.

18 Q. You haven't seen any examples on the  
19 IFTTT website of users using an IFTTT applet for  
20 grouping of speakers or for Zone Scene? 04:20:00

21 A. I haven't, but I wouldn't expect to.  
22 Given the pervasiveness of Google's infringement  
23 and the ability to group through Sonos, I don't  
24 suspect that IFTTT is necessary, because most users  
25 fall into one of those two camps, the authorized 04:20:17